

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**STEVE L. LYONS**

Claimant

VS.

**IBP, INC.**

Respondent

Self Insured

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Docket No. 251,250

**ORDER**

Both claimant and respondent appeal from an Order entered by Administrative Law Judge Brad E. Avery on August 24, 2000. The Appeals Board heard oral argument February 15, 2001. Jeff K. Cooper was appointed Appeals Board Member Pro Tem to serve in place of Board Member Gary M. Korte who recused himself from this proceeding.

**APPEARANCES**

Judy Pope Edwards of Topeka, Kansas, appeared on behalf of claimant. Bradley D. Thornton of Dakota City, Nebraska, appeared on behalf of respondent.

**RECORD AND STIPULATIONS**

The record considered by the Board consists of the transcript of the August 18, 2000 Penalties Hearing and the exhibits attached thereto and the pleadings and documents contained in the administrative file, including the February 16, 2000 Order for Compensation and the August 24, 2000 Order by Administrative Law Judge Brad E. Avery.

**ISSUES**

This is an appeal from the hearing and order on claimant's Application for Assessment of Civil Penalties. The issues to be considered on appeal relate to child support payments and the District Court order that an arrearage in those payments be collected from the claimant's income. Respondent agrees that it owed temporary total disability (TTD) benefits in accordance with a February 16, 2000 preliminary hearing Order for Compensation. But respondent paid a portion of those benefits to the Coffey County District Court pursuant to a District Court Order to Withhold Income for Child Support. The Administrative Law Judge, after finding the District Court's order for withholding of TTD

benefits was invalid, entered an order requiring respondent to pay claimant the amount it withheld from his TTD, but denying penalties.

An Order/Notice to Withhold Income for Child Support dated February 2, 1999, was filed in the District Court of Coffey County, Kansas, providing that the child support payments should be deducted from claimant's income. The ALJ, however, determined that "no valid order for withholding of temporary total benefits has ever been served or issued pursuant to the requirements of K.S.A. 44-514 nor has any notice of lien been served pursuant to the requirements of K.S.A. 23-4,146(a)(4)." Respondent argues the ALJ exceeded his authority in ruling upon the validity, enforceability, and effect of an order for withholding entered by a Kansas District Court.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments, the Appeals Board concludes that the Order by the ALJ should be affirmed as to the denial of penalties, but reversed as it relates to the issue of child support payments.

By amendments which became effective July 1, 1993, the Workers Compensation Act authorizes involuntary assignment of workers compensation benefits to enforce an order for child support. K.S.A. 44-514(b)(1) provides that involuntary assignment is to be obtained as follows:

"(1) Any involuntary assignment shall be obtained by motion filed within the case which is the basis of the existing order of support."

K.S.A. 44-514(b)(1)(B) further states that the court may grant the following relief:

"(i) Current support shall be collectible from benefits paid on a weekly basis but shall not exceed 25% of the workers gross weekly compensation excluding any medical compensation and rehabilitation costs paid directly to providers.

"(ii) Past due support shall be collectible from lump-sum settlements, judgments or awards but shall not exceed 40% of a lump sum, excluding any medical compensation and rehabilitation costs paid directly to providers."

K.S.A. 2000 Supp. 23-4,146(a)(4) provides in part that:

If the obligor is or may become entitled to workers compensation benefits, the obligee may perfect a lien on the benefits by serving a notice of lien on the obligor. Copies shall be served on appropriate persons, including but not limited to the director of workers compensation. The notice of lien shall have the effect of attaching the obligor's interest in the workers compensation benefits.

The ALJ determined that the above-quoted provisions relating to child support were not complied with. Without intending any disagreement with the statutory interpretation by the ALJ, the Board concludes that statute directs that the issues related to child support enforcement be determined in the District Court, not in the workers compensation proceedings. As we understand the statutes, neither the ALJ nor the Board has jurisdiction to determine the propriety of the District Court's order. The Board therefore concludes that the ALJ exceeded his jurisdiction in holding that the TTD benefits are not subject to a valid lien for child support. The order for respondent to pay the so-called underpayment of TTD in the amounts withheld from claimant's checks is reversed. The order denying penalties is affirmed.

**AWARD**

**WHEREFORE**, the Board finds and concludes that the Order entered by Administrative Law Judge Brad E. Avery dated August 24, 2000, should be, and is hereby, modified. The Board finds that neither the Administrative Law Judge nor the Board has jurisdiction to determine issues relating to the enforcement of the order to withhold child support benefits.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 2001.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Judy Pope Edwards, Topeka, KS  
Bradley D. Thornton, Dakota City, NE  
Brad E. Avery, Administrative Law Judge  
Philip S. Harness, Director